

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

☐ Individual appearing without attorney
☒ Attorney for: Alfred H. Siegel, solely as Ch. 7 Trustee

FOR COURT USE ONLY

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CASE NO.: 2:08-bk-21725-BB
CHAPTER: 7

NOTICE OF SALE OF ESTATE PROPERTY

Debtor(s).

Sale Date: 12/17/2014

Time: 10:00 am

Location: Courtroom 1475 (Hon. S. Bluebond), Roybal Federal Building, 255 E. Temple St., Los Angeles, CA 90012

Last date to file objections: 12/03/2014

Any and all interests of the estate of IndyMac Bancorp, Inc. ("Bancorp") in 48 second lien residential mortgage loans, as further described in the attached Notice of Motion and Motion ("Notice of Motion").

AS IS, WHERE IS, WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND. Property is to be sold free and clear of liens, claims, encumbrances and other interests under Bankruptcy Code section 363(b), (f), and (m), pursuant to that certain Asset Purchase Agreement, dated November 19, 2014 between the Chapter 7 Trustee for the estate of Bancorp (the "Trustee") and Park Tree Investments 10, LLC. See attached Notice of Motion for more information.

* Price subject to adjustment as described in the attached Notice of Motion.

Overbid procedure (if any):

As described in the attached Notice of Motion. Please note that a deposit and certain documentation are required to be delivered to counsel for the Trustee no later than December 10, 2014, at 5:00 p.m. as a prerequisite to any overbid.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

December 17, 2014, at 10:00, United States Bankruptcy Court, Courtroom 1475 (Hon. Sheri Bluebond), Roybal Federal Building, 255 East Temple Street, Los Angeles, CA 90012.

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

For information on presenting an overbid, a copy of the Motion to approve the sale, and/or a copy of the Asset Purchase Agreement, please contact the Trustee's counsel: Klee, Tuchin, Bogdanoff & Stern LLP, Attn: Martin R. Barash, 1999 Avenue of the Stars, 39th Floor, Los Angeles, CA 90012, Telephone: (310) 407-4000, Facsimile (310) 407-9090, email:mbarash@ktbslaw.com

Date: 11/24/2014

LEE R. BOGDANOFF (State Bar No. 119542)
MARTIN R. BARASH (State Bar No. 162314)
WHITMAN L. HOLT (State Bar No. 238198)
KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, California 90067
Telephone: (310) 407-4000
Facsimile: (310) 407-9090
E-mail: lbogdanoff@ktbslaw.com
mbarash@ktbslaw.com
wholt@ktbslaw.com

*Attorneys for Alfred H. Siegel, solely as Chapter
7 Trustee*

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
INDYMAC BANCORP, INC.

Debtor.

Case No. 2:08-bk-21752-BB

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR ORDER APPROVING SALE,
SUBJECT TO OVERBID, OF ESTATE'S
INTEREST IN CERTAIN RESIDENTIAL
SECOND LIEN NOTES, FREE AND
CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
ALFRED H. SIEGEL, MARTIN R.
BARASH AND SHANDA D. PEARSON IN
SUPPORT THEREOF**

Hearing
Date: December 17, 2014
Time: 10:00 a.m.
Judge: Hon. Sheri Bluebond
Place: United States Bankruptcy Court
255 E. Temple St.
Courtroom 1475
Los Angeles, CA 90012

**TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY JUDGE,
THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL OTHER PARTIES
ENTITLED TO NOTICE:**

PLEASE TAKE NOTICE that Alfred H. Siegel, chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of IndyMac Bancorp, Inc. (the "Bancorp" or the "Debtor"), hereby brings this motion (this "Motion") pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Bankruptcy Rule 6004-1, for entry of an order approving the sale of any and all interests of the Estate in 48 residential second mortgage loans (the "Remaining Bancorp Notes") pursuant to that certain Asset Purchase Agreement, dated November 19, 2014 (the "APA"),¹ between the Trustee and Park Tree Investments 10, LLC (the "Buyer") or a successful overbidder, if any, free and clear of any and all liens, claims, encumbrances or other interests pursuant to sections 363(b), (f) and (m) of the Bankruptcy Code.

As explained more fully in the attached Memorandum of Points and Authorities, the Trustee has determined in his sound business judgment that the proposed sale of the Estate's interests in the Remaining Bancorp Notes to the Buyer, subject to higher and better bids, is in the best interests of the Estate. The Remaining Bancorp Notes currently are in the possession of OneWest Bank (the "Servicer"), which is successor in interest to certain assets of Bancorp's former subsidiary, IndyMac Bank, FSB (the "Bank"). After taking possession of various assets of the Bank in 2009, the Servicer discovered that it was in possession of certain loans under which Bancorp (rather than the Bank) is the obligee. The Remaining Bancorp Notes are among the Bancorp loans discovered by the Servicer. According to the Servicer, it has been servicing the Remaining Bancorp Notes since 2009.²

¹ The APA is attached hereto as Exhibit 1. Capitalized terms not defined herein shall have the meanings ascribed to them in the APA. The descriptions of the APA in this Notice of Motion and the attached Memorandum of Points and Authorities do not supplement or alter the terms of the APA. In the event of any inconsistency between this Motion and the APA, the APA shall govern.

² Pursuant to a separate Motion, set to be heard on December 17, 2014, at 10:00 a.m., the Trustee has requested approval of a certain *Settlement and Servicing Termination Agreement* with the Servicer (the
(FOOTNOTE CONTINUED)

PLEASE TAKE FURTHER NOTICE that a hearing on the proposed sale of the Purchased Assets and an auction (if necessary) to determine the highest and best bid (collectively, the "Sale Hearing") will be held on December 17, 2014, at 10:00 a.m. (Pacific Time), or as soon thereafter as counsel may be heard, before the Honorable Sheri Bluebond, United States Bankruptcy Judge, in the Edward R. Roybal Federal Building, 255 East Temple Street, Courtroom 1475, Los Angeles, California 90012.

PLEASE TAKE FURTHER NOTICE that based on information provided by the Servicer, the Trustee is informed and believes the following with respect to the Remaining Bancorp Notes:³

- The Remaining Bancorp Notes had an aggregate unpaid principal balance of \$901,178 as of August 28, 2014. The individual balances as of that date range from approximately \$183 to \$49,224, with an average balance of approximately \$18,775.
- The status of the Remaining Bancorp Notes is summarized as follows, as of August 28, 2014:

Status	Count	Aggregate Unpaid Principal Balance
Current	15	\$277,280
12-29 Days Past Due	3	\$56,990
60 Days Past Due	1	\$24,052
120+ Days Past Due	24	\$478,205

"Settlement Agreement"). Among other things, the Settlement Agreement resolves a dispute between the parties regarding the servicing fees and expense reimbursements due the Servicer and establishes a framework for its cooperation with the transfer of the Remaining Bancorp Notes to a new owner and servicer.

³ The Trustee has not independently verified this information and makes no representations or warranties with respect to it. As noted below, the proposed sale of the Remaining Bancorp Notes is to be made on an "AS IS, WHERE IS" basis, with no representations or warranties of any kind. Any party that wishes to present a competing bid must conduct its own due diligence and make an independent determination whether to proceed before making a bid.

Delinquent/Bankruptcy	4	\$15,406
Foreclosure	1	\$49,244

- The Remaining Bancorp Notes are, or at one time were, secured by second liens on single family residences.
- The Remaining Bancorp Notes have interest rates ranging from 7.99% to 15.5%, with an average of 11.34%.

PLEASE TAKE FURTHER NOTICE that the APA provides for the sale of any and all interests of the Estate in the Remaining Bancorp Notes (the "Purchased Assets"), on an "AS IS, WHERE IS" basis, with no warranties of any kind, for an aggregate purchase price of \$105,319 ("Purchase Price"), provided that if the aggregate unpaid note balance of the Remaining Bancorp Notes ("UPB"), as of three business days before the closing of the sale (the "Cutoff Date") is less than \$889,234 (the "Threshold Amount"), the aggregate purchase price will instead be the dollar amount equal to 11.49% of such aggregate unpaid balance (the "Alternative Purchase Price").

PLEASE TAKE FURTHER NOTICE that by this Motion, the Trustee requests that the Court approve the following procedures with respect to any overbid for the Purchased Assets:

1. Any person or entity interested in submitting an overbid for the Purchased Assets must attend the Sale Hearing.
2. If a qualified overbidder appears at the Sale Hearing to present a qualified overbid, the Court will conduct an auction.
3. A qualified overbid will be a bid for the Purchased Assets that is at least \$5,000 greater than the Purchase Price, *i.e.*, \$110,319, provided that if the initial bid provides for an Alternative Purchase Price (which will be the case if the UPB is less than the Threshold Amount as of the Cutoff Date), a qualified overbid must be a percentage of the UPB that is at least .51% greater than the Alternative Purchase Price under the APA, *i.e.*, 12% of the UPB.
4. With the exception of the purchase price, a qualified overbid must be on the same terms and conditions as is the bid set forth in the APA.

KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE: 310-407-4000

5. In order to be a qualified overbidder, a bidder must, no later than seven days before the Sale Hearing, deliver to the Trustee's attorneys (identified above):

(i) a cashier's check made payable to "Alfred H. Siegel, Chapter 7 Trustee," or wire transfer, in an amount equal to 10% of the Purchaser Price of its qualified overbid;

(ii) an executed asset purchase agreement that is identical to the APA, other than with respect to the purchase price and the identity of the purchaser (an "Overbidder APA"); and

(iii) proof of the bidder's ability to satisfy the Purchase Price under its overbid, timely close the transaction and perform all other obligations contemplated in the Overbidder APA.

6. The deposit of a successful overbidder shall be forfeited if such party does not timely close the transaction in accordance with the Overbidder APA.

7. In the event the Court conducts an auction, and the successful bidder at the auction is unable to timely close the transaction under its APA or an Overbidder APA (as applicable), the Trustee shall be authorized to proceed with the sale to the next highest bidder.

PLEASE TAKE FURTHER NOTICE that if you are considering making an overbid, have questions about the process and/or seek additional information about the Purchased Assets, you are encouraged to contact the Trustee's counsel immediately: Martin R. Barash, Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39th Floor, Los Angeles, California 90067, (310) 407-4005, mbarash@ktbslaw.com. All due diligence requests are subject to the execution of a confidentiality agreement satisfactory to the Trustee and verification of the inquiring party's qualifications and financial wherewithal to acquire the Purchased Assets. All due diligence materials that may be provided by the Trustee or his representatives in response to such an inquiry are provided without representation and warranty of any kind.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice and Motion, the attached Memorandum of Points and Authorities, the attached Declaration of Alfred

KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE: 310-407-4000

1 H. Siegel (the "Trustee Declaration"), the attached Declaration of Martin R. Barash (the "Barash
2 Declaration"), the arguments of counsel, the record in the Debtor's bankruptcy case, and such
3 other pleadings and admissible evidence properly brought before the Court at or before the Sale
4 Hearing.

5 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 6004-1(c)(3),⁴ the Trustee
6 hereby discloses that (i) the Trustee does not seek authority to pay a commission in connection
7 with this transaction and (ii) the Trustee is unaware of any tax liabilities to the Estate as a result of
8 this sale.

9 **PLEASE TAKE FURTHER NOTICE** that any response or opposition to this Motion
10 must be in writing, must otherwise comply with Local Bankruptcy Rule 9013, and must be filed
11 with the Court and served upon counsel for the Trustee (by personal delivery, messenger, fax or
12 email) at the address set forth in the upper left-hand corner of the first page of this notice of
13 motion no later than fourteen (14) days before the date of the hearing on this Motion. A judge's
14 copy of the opposition must be delivered to the chambers of the Honorable Sheri Bluebond in
15 accordance with Local Bankruptcy Rule 5005-2(d). Pursuant to Local Bankruptcy Rule 9013-
16 1(h), the failure to timely file and serve a written opposition may be deemed by the Court to be
17 consent to the granting of the relief requested herein.

18 **WHEREFORE**, the Trustee respectfully requests that the Court enter an order:

- 19 1. Granting the Motion in its entirety;
 - 20 2. Approving the overbid procedures described above;
 - 21 3. Approving the sale of the Purchased Assets to the Buyer pursuant to the APA, or to
- 22 a successful overbidder pursuant to an Overbidder APA, free and clear of all liens, claims,
23 encumbrances and interests, pursuant to Bankruptcy Code sections 363(b) and 363(f), with any
24

25 ⁴ LBR 6004-1(c)(3)(H) & (I) provide that a notice of a motion to authorize the sale of estate property
26 must state, "If authorization is sought to pay a commission, the identity of the auctioneer, broker, or
27 sales agent and the amount or percentage of the proposed commission to be paid; [and] ... A
28 description of the estimated or possible tax consequences to the estate, if known, and how any tax
liability generated by the sale of the property will be paid ..."

KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE: 310-407-4000

liens on the Purchased Assets attaching to the proceeds of the sale with the same validity and priority, and subject to the same infirmities, as the original liens;⁵

4. Authorizing and empowering the Trustee to execute and deliver on behalf of the Estate any and all documents that he determines are reasonably necessary to implement the terms of the sale of the Purchased Assets;

5. Determining that the notice given by the Trustee in connection with the proposed sale and hearing thereon was adequate, proper and in compliance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;

6. Determining that the Buyer or a successful overbidder is purchasing the Purchased Assets in "good faith," as defined by Bankruptcy Code section 363(m), and is entitled to the protections of that statute;

7. Waiving the 14-day stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure;

8. Granting such other and further relief as the Court deems just and appropriate.

DATED: November 24, 2014

Respectfully submitted,



By: _____

MARTIN R. BARASH
KLEE, TUCHIN, BOGDANOFF & STERN LLP
Attorneys for Alfred H. Siegel, solely as Chapter 7 Trustee

⁵ As explained below at VI., the Trustee does not believe that any valid liens exist in the Purchased Assets.